Supreme Court, U.S.
FILED

No. _____ 091144 MAR 17 2010

OFFICE OF THE CLERK

In The

Supreme Court of the United States

BERNARD DOLENZ,

Petitioner,

vs.

WTG GAS PROCESSING, L.P., VEALMOOR GP, INC., UNITED STATES OF AMERICA, and J. BAXTER BRINKMANN,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

BERNARD J. DOLENZ, pro se
#31480-077
6102 Swiss Avenue
Dallas, Texas 75214
(214) 821-0220
bernarddolenz@att.net

QUESTIONS PRESENTED FOR REVIEW

DID THE FIFTH CIRCUIT ERR IN NOT PROVIDING A JUDICIALLY REASONED OPINION FOR THE ISSUES BEFORE IT?

ISSUE NO. 1: DID THE TRIAL COURT LACK JURISDICTION BECAUSE (1) NO DIVERSITY OF PARTIES, (2) USA LACKED STANDING, (3) BRUCE DOLENZ AND BRIAN DOLENZ WERE NOT MADE A PARTY TO THE DISPUTE AS NECESSARY PARTIES, (4) STATUTE OF LIMITATIONS AS USA IS TIME BARRED FOR COLLECTING, AND (5) VENUE CHANGE TO DALLAS WAS MANDATORY WHEN THE TRUST ISSUE AROSE.

ISSUE NO. 2: DID THE TRIAL COURT ERR IN NOT HAVING A JURY TRIAL AS WAS DEMANDED?

ISSUE NO. 3: DID THE TRIAL COURT ERR IN HOLDING THAT THE DOLENZ TRUST CREATED APRIL 17, 1995 IS A SHAM/ALTER EGO/NOMINEE OF PLAINTIFF DOLENZ INDIVIDUALLY?

ISSUE NO. 4: DID THE COURT ERR IN NOT REMANDING THIS CASE TO THE FEDERAL DISTRICT COURT IN DALLAS WHERE VENUE WAS MANDATORY SINCE BERNARD DOLENZ, TRUSTEE LIVED IN DALLAS AND THE TRUST WAS MAINTAINED IN DALLAS PURSUANT TO PROPERTY CODE 115/002(B)?

QUESTIONS PRESENTED FOR REVIEW – Continued

ISSUE NO. 5: IS THE DECLARATION OF TRUST CREATED 4-17-95 VALID?

ISSUE NO. 6: DID THE COURT ERR IN GRANTING SUMMARY JUDGMENTS TO DEFENDANTS WTG GAS/VEALMOOR, INTERVENOR BAXTER BRINKMANN, AND USA ON MARCH 31, 2009?

ISSUE NO. 7: WAS THE TRIAL COURT SWAYED BY IMPROPER BIAS AGAINST BERNARD DOLENZ INDIVIDUALLY DERIVED FROM AN EXTRAJUDICIAL SOURCE?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTIONAL STATEMENT	1
CONSTITUTIONAL AND STATUTORY PROVISIONS	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	4
REASONS FOR GRANTING WRIT OF CERTIORARI	6
SUMMARY OF THE ARGUMENT	7
ARGUMENT	9
CONCLUSION	15

APPENDIX:

Opinion Fifth Circuit 12/30/09 (Not for publication)	App. 1
Amended Final Judgment 6/30/09	App. 3
Final Judgment 3/31/09	App. 6
Sheriff's Sale 2/1/94	App. 9
Supplement to Certificate of Interest	App. 18

TABLE OF AUTHORITIES

Page

CASES

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986) 4

Armstrong v. Armstrong, 532 SW2d 406 (Tex. App. – Eastland 1976) 12

Celotex Corp. v. Catrett, 477 U.S. 317 (1986) 4

Cooper Tire & Rubber v. Farese, 423 F.3d 446 (5th Cir. 2002) 4, 14

Grantz v. Murchison, 130 F. Supp. 709 (D.C. Del. 1955) 9

Howard v. George, 395 F. Supp. 1079 (D.C. Ohio 1975) 9

Lanius v. Fletcher, 101 SW 1076 (Tex. 1907) 12

Lujan v. Defenders of Wildlife, 112 S.Ct. 2130 (1992) 10

Moore v. City of Waco, 20 SW 61 (Tex. 1892) 11

Nolana Development Association v. Corsi, 682 SW2d 246 (Tex. 1984) 11

Serna v. Webster, 908 SW2d 487 (Tex. App. – San Antonio 1995) 10

Tex. Ass'n of Business v. Air Control Bd., 952 SW2d 440 (Tex. 1993) 13

U.S. v. Stowell, 133 U.S. 1 (1890) 11

OPINIONS BELOW

The opinions of the district court are not known to have been cited. The Fifth Circuit opinion affirming the decisions of the district court is "Not to be published." The opinions are reproduced in the appendix.

JURISDICTIONAL STATEMENT

The opinion of the Fifth Circuit Court of Appeals (App. 5) was filed December 30, 2009. This Court has jurisdiction to do judicial review pursuant to 28 USC 1254. However, because all of the parties are citizens of Texas, there is no diversity of citizenship as required by 28 USC 1332 and 1335 for interpleader jurisdiction; if so, the Midland Federal Court lacked jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS

USCA 1, 5, and Texas Constitution Art. I, Sec. 13 (Open Court's Provision), 15 (right to jury trial shall remain inviolate), 19 (No citizen shall be deprived of . . . property . . . except by due course of law of the land), and 29 (. . . all laws contrary to the Texas Bill of rights shall be void), are involved.

The following statutes are involved: 28 USC 1335 [interpleaded]; 28 USC 3301 (2) [assets of a debtor];

28 USC 2462, 3306 [time barred] 28 USC 455(b)(1) [prejudice, religious]. Property Trust Code 112.032 [property held in passive-trust vests immediately with beneficiary at time of creation] 42 USC 1983 [Every person . . . shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .]

STATEMENT OF THE CASE

Bernard J. Dolenz created 14 trusts for his 5 children in the late 1980s and mid-1990s for estate purposes. On April 17, 1995 an irrevocable trust was created for Dolenz's two sons – Brian and Bruce Dolenz. On July 10, 1995 an assignment of an interest in the J. Butler & Co's "Snyder Interests" was placed in this Dolenz Trust, originating from a sheriff's sale.

The Dolenz Trust received checks from Texaco Exploration for the 4.566% interest in the "Snyder Net Cash Gains". In March 2000 WTG Gas Processing LP and Vealmoor GP, Inc. were assigned several Gas Plants from Assignor Texaco Exploration. WTG Gas sent 1099's for 2001, 2002, and 2003 for $21,284.62; however, no money was ever received. Inquiries received double talk and "woo woo" words (anfractious explanations to cover up paralogia) with demand being made. Suit was filed for conversion, fraud, and exemplary damages in Dallas. On a venue argument, the case was sent to Midland's 142nd

District Court. USA noticed WTG that it had a lien on Bernard Dolenz, individually, from a felony conviction in Dallas over a "not guilty" plea.[1]

Because of USA's notice, WTG 16 months later interpled USA as a stakeholder, even though it knew that the notice applied only to Dolenz individually,

---

[1] **Dolenz was given 90 months and 1.7 million dollars restitution sentence over 12 counts of "mail fraud and aid and abetting" (duplicity here) for a total amount of $4500 on 12 billings to three private insurance companies. When out of prison, Dolenz learned that this started with a *qui tam* suit, *under seal*, triggered by a morally bankrupt state judge who fixed cases and gave legal strategy advice to some major law firms at a gay bar where subsequently they would appear before him as a visiting judge in exchange for homosexual favors. This judge had *ex-parte* conversations with an attorney who was opposing counsel in a case involving Dr. Dolenz where this visiting judge was sitting. This judge received a $200,000 kick-back fee on a medical malpractice case. Reporting this conduct to the Judicial Commission per State Bar is mandatory under State Bar Rule 8.03(a). Someone on the Commission advised this judge about Dolenz's whistle blowing. This case before this judge was dismissed in favor of Dr. Dolenz, et al. when Judge Godbey replaced him.**

The Federal prosecutor tried this case most foul: He did not give *Brady, Jaencks, Miranda* rights; nor anything about an underlying *qui tam* lawsuit. The indictment lacked the element of "materiality" as mandated by *Neder*. The prosecution did not reveal that Agent Wickersam and AUSDA Umphres gave an affidavit that the *qui tam* suit had no nexus to the Federal Government. That prosecutors get it wrong is demonstrated by 20 "convicts" are now free because of DNA testing in Dallas alone!

and not to the Dolenz Trust. The strategy was one where they might get off the hook for their culpability of conversion and fraud. Dolenz contends that USA lacks standing, did not have all the defendants give their approval, and failed to verify the removal pleadings. Even though a jury trial was demanded, the Court held a bench trial and all of the parties won against the Trust.

Intervenor Brinkmann contended he had a remainderman interest even though there was not any recordation anywhere, which is mandatory where real estate interests are concerned. The Sheriff's sale had three tracts of real estate described.

The Midland Court circumvented a trial by jury by granting summary judgment to all the defendants, not resolving all reasonable doubts about the facts in favor of the nonmoving party pursuant to *Celotex Corp.*, *Anderson*, and the Fifth Circuit's *Cooper Tire*. Issues of jurisdiction, necessary parties, statute of limitations for seizure of assets, USA standing, passive-trust to Brian Dolenz and Bruce Dolenz, venue change to Dallas pursuant to Trust Code 115.002(b), conversion, breach of contract, fraud were not properly adjudicated. . . .

STATEMENT OF FACTS

On April 25, 2005, Plaintiff Bernard Dolenz Trustee filed this action in the Dallas district court, seeking damages from Defendants WTG Gas

Processing, L.P. and Vealmoor, GP, Inc. Dolenz sought damages derived from a reservation of an assignment of the "Snyder Gasoline Plant Interest". Because of venue, the case was transferred to Midland and then removed to Federal Court.

Even though USA imputed ownership of the trust funds to Dolenz *individually*, the US Court ruled that Dolenz was not a *licensed* attorney because of his conviction and was ordered to obtain counsel. Steve Hershberger, a local Midland attorney, represented the Dolenz Trust on a contingency basis. Even though a Jury Trial was demanded [10/16/06 (91), 12/26/06 (289), 1/25/07 (545)], the Court held a bench trial 6/26/07 (Doc. # 79), and on 8/16/07 issued Findings of Fact ("FOF") and Conclusions of Law ("COL") that the 4/17/05 trust was invalid, and if valid, was a sham/alter ego/nominee of Dolenz individually, and that the funds in dispute are not held in trust and owned by Bernard Dolenz, individually (Doc. # 86). The court also ruled that Dolenz individually could proceed with the rest of the case (Doc. # 87).

On 5/1/07, J. Baxter Brinkmann intervened, contending that he had a remainderman interest in the funds when Virginia Brinkmann, his mother, died August 13, 2006 (Doc. # 63).

On 8/30/07, Dolenz filed a Motion for Reconsideration of # 86's FOF and COL (Doc. # 90), which was denied 9/12/07 (Doc. # 93). On 2/01/08, an Order that Dolenz replead in his individual capacity within 14 days (Doc. # 113), which Plaintiff's Third Amended

Complaint was filed 2/12/08 (Doc. # 118). On 2/6/08, Dolenz filed a Motion to Wind-Up Affairs of the Dolenz Trust (Doc. # 114), which was denied 5/9/08 (Doc. # 126). On 5/28/08, a venue Motion to Transfer Case to Northern District of Texas was filed (Doc. # 131), which was denied 3/31/09 (Doc. # 168). On 7/9/08, a Summary Judgment hearing was held involving all parties before the court (Doc. # 157). On 3/31/09, Judgment was rendered in favor of all parties against the Plaintiff Dolenz, indicating that Dolenz Trust had no ownership in SNPI and that USA had a valid preexisting lien on any sums awarded to Dolenz (Doc. 174). A Notice of Appeal was filed 4/08/09 by Dolenz.

REASONS FOR GRANTING WRIT OF CERTIORARI

1. Government and their agents should not have a special pass to do overt and blatant wrongful acts under the color of immunity. Supporting taking trust property that has initially vested in the beneficiaries in a passive irrevocable trust, and attempting to impute such assets to a debtor for a restitution lien, encourages radicalism in the law and actions. This dangerous disarrangement of property and liberty may cause some to incite revolution. Forgetting the purpose of fairness in the laws, a government is likely to forget its own purpose and create dangers both to liberty and to justice.

2. Certiorari should be granted as each of the Issues presented affect the property rights of citizens and their families. The Issues presented strike at the heart and authority of the US Constitution and the Texas Constitution and impacts the administration of justice and the public's perception of its fairness.

3. Just as there is no such thing as a semi-pregnant woman or a semi-honest man, a semi-reasoned opinion or quasi-judicial finding from a court is error. Truth should never be a casualty in the courthouse, but too often it is. Over 250 prisoners have been proven innocent by DNA testing, 20 from Dallas County alone! When the record is clear, that all parties having a claim to property and have not been noticed as necessary parties, such judgment is not final in spite of representations by government that it is final. This Court should place controls on government and not allow *THEFT BY FIAT.*

4. Pursuant to Supreme Court Rule 10, the appeals court has decided important questions *en mass* which conflict with relevant decisions of this Court dealing with statute of limitations, liens, jurisdiction, and trust laws involving this Court and the Texas courts.

SUMMARY OF THE ARGUMENT

Bernard Dolenz, *individually,* obtained a 4.566% interest in the "Snyder Gasoline Plant Interest" from a Sheriff's Sale 2/1/94, and transferred interest into a

passive, irrevocable trust for his sons, Brian and Bruce Dolenz on 4/17/95. Texas Exploration sent payments, and then assigned its interests to WTG Gas and Vealmoor. WTG Gas and Vealmoor sent 1099's for years 2001, 2002, 2003, but no money was ever received. Because demand was ignored, suit was filed 4/25/05 for conversion, fraud, and exemplary damages. WTG Gas received notice 12/12/05 that USA had a lien against Bernard Dolenz, individually, and 16 months later interpled USA, who removed the case to Federal Court. There, USA imputed the assets in the Trust to Dolenz *individually*, raising their typical arguments to destroy trusts.

Bernard Dolenz had set up 14 trusts for his children with the intention for estate planning, having no creditor in the offing including USA. Since this trust, like others for his children, were set up as *irrevocable passive-trusts*, the legal title to the corpus vested by law into Brian and Bruce Dolenz trusts on 4/17/95 when the trust was created. This plaintiff contends that the Dolenz Trust at issue is valid as a matter of law, and that the adverse parties are not entitled to summary judgment relief as a matter of law and because there are disputed facts. Bernard Dolenz also contends that Intervenor Brinkmann failed to record his purported "remainderman" interest.

The funds should be released to Brian and Bruce Dolenz and not imputed as being owned by Bernard Dolenz, individually. All orders should be voided as the court lacks jurisdiction. The judge was not fair or

impartial because of his conduct of berating this Plaintiff's religious beliefs from the bench indicating even that "sainthood" could be purchased by the Plaintiff.

ARGUMENT

DID THE FIFTH CIRCUIT ERR IN NOT PROVIDING A JUDICIALLY REASONED OPINION FOR THE ISSUES BEFORE IT?

Because the Fifth Circuit gave a global opinion and did not address the issues presented to it, the crux of the issues are presented:

I. The trial court lacked jurisdiction, even to give a final judgment for the following reasons and case law:

- 28 USC 1335 and 1332 requires diversity of citizenship. This case fails for lack of diversity as all the parties are from Texas.

- **Preconditions** for removal require that all defendants join the petition for removal per *Howard v. George*, 395 F. Supp. 1079 (D.C. Ohio 1975) and that the defendant seeking removal must file a verified petition. *Grantz v. Murchison*, 130 F. Supp. 709 (D.C. Del. 1955). USA failed to file a verification.

- The interpleaded action was untimely with the 16 months delay pursuant to

Serna v. Webster, 908 SW2d 487, 491 (Tex. App. – San Antonio 1995).

- USA lacked **standing** which requires at a minimum three elements: (1) Injury in fact which is concrete and not conjectural, (2) A causal connection between the injury and the party's *conduct* or missions, (3) A likelihood that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife,* 112 S.Ct. 2130, 2136 (1992). Here USA tries to impute an irrevocable passive trust (which is not a debtor to USA) to Dolenz, *individually,* without any proof before filing, violating FRCP 11. Such chameleon word-smithing shows the hunch and speculations for its spin to call it something other than what it is. This folly is demonstrated in Lewis Carroll's *Alice in Wonderland:*

> "When I use a word," Humpty Dumpty said in rather a scornful tone, "It means just what I choose it to mean – neither more nor less."
>
> "The question is," said Alice "whether you can make words mean so many different things."
>
> "The question is," said Humpty Dumpty, "which is to be **master** – that's all."

- 28 USC 3301(2) allows taking only "assets" of a debtor. The trust is vested in Brian and

Bruce Dolenz at inception of the trust 4/17/95, much earlier than USA's lien; they are not debtors to USA.

- 28 USC 2462 indicates that a suit for forfeiture shall not be entertained unless commenced five years from the date when the claim first accrued. *U.S. v. Stowell*, 133 U.S. 1, 16-17 (1890) indicates that a forfeiture claim accrues upon the commission of the underlying unlawful act even if the offense is not discovered until later. On this reasoning, since USA has contended that all of the clinic's work product was improper when it opened in the early 1980's, USA remains time barred as even more than 20 years has expired. USA has been on notice since 1998 when it took trust documents and files from 6102 Swiss Avenue and the Dolenz Clinic.

- The passive irrevocable trust at issue was not set up to defraud any creditors when it was created 4/17/95. Title vested directly in the beneficiaries per Trust Property Code 112.032. *Nolana Development Association v. Corsi*, 682 SW2d 246, 249 (Tex. 1984) instructs:

> If a trustee is not given affirmative powers and duties, the trust is "passive" or "dry" and legal title is vested in the beneficiaries, not the named trustee.

This has been the law over a century. See *Moore v. City of Waco*, 20 SW 61, 63 (Tex.

1892); *Lanius v. Fletcher*, 101 SW 1076 (Tex. 1907).

When the Trust was first brought as an issue before the Midland Federal Court, the issue of jurisdiction and venue then became an issue. The case should have been transferred to Dallas. Trust Property Code 115.002(b) directs:

> (b) If there is a single, noncorporate trustee, an action shall be brought in the county in which: (1) the trustee resides or has resided at any time during the four-year period preceding the date the action is filed; or (2) the situs of administration of the trust is maintained or has been maintained at any time during the four year period preceding the date the action is filed.

The Court should take judicial notice that Bernard J. Dolenz does not live in Midland, Texas, and that it lacked jurisdiction and venue over this case.

- The court did not have the necessary parties before it; therefore, **there is no final judgment**. *Armstrong v. Armstrong*, 532 SW2d 406 (Tex. App. – Eastland 1976) directs:

> In suits affecting trusts or respecting the trust property, the beneficiary is a necessary party.

- Even though a Jury Trial was demanded [10/16/06 (91), 12/26/06 (289), 1/25/07 (545)], the Court held a bench trial 6/26/07. (Doc.

> # 79). Rule 38 affirms USCA 7: Rule 38(a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

The Texas Constitution, Article I, section 15 states: "The right of trial by jury shall remain inviolate . . . " *Tex. Ass'n of Business v. Air Control Bd.*, 952 SW2d 440, 453-54 (Tex. 1993) instructs:

> Access to the courts is unquestionably a fundamental constitutional and common law right. Article I, section 13 of the Texas Constitution forms the nucleus of this protection:
>
> The open courts provision specifically guarantees all litigants the right to redress their grievances – to use a popular and correct phrase, the right to their day in court. *This right is a substantial state constitutional right.*
>
> " . . . All Courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law." Section 29 puts extreme value on Section 13: "To guard against transgressions of the high powers herein delegated, we declare that everything in this 'Bill of Rights' is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be *void.*" (emphasis added).

The Trial Court erred in not allowing a jury trial, and all orders should be *voided*.

Dolenz contends that if a jury were present that the outcome would have favored his sons' trust funds.

- The Trust created 4/17/95 is valid and fully enforceable pursuant to Property Codes 112.001, 112.002, and 112.004.

- Granting summary judgment to WTG Gas, Intervenor Brinkmann, and USA was error as necessary parties were not before the court and there were genuine issues as to law and material facts concerning breach of contract by WTG Gas, fraud for sending bogus 1099's, action for money had and received, conversion of funds, jurisdiction, necessary parties violating *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). The district court must resolve all reasonable doubts about the facts in favor of the nonmoving party. *Cooper Tire & Rubber v. Farese*, 423 F.3d 446, 456 (5th Cir. 2002).

- Intervenor Brinkmann's purported remainderman's interest fails as such interest was not filed; real estate was involved in the Sheriff's sale. See Article 5246 and CPRC 34.046.

- Bernard Dolenz did not have a fair and impartial judge as to be granted under 28 USC 144 and 455(b)(1), with the record showing the judge's prejudices

by belittling and discrediting Dolenz's religious beliefs. App. 2377-2381.

CONCLUSION

WHEREFORE, based upon the facts and arguments herein, the record, and the appendix, this Petitioner prays that this U.S. Supreme Court grant the following relief:

As to issues one through seven that this Court grant the Writ of Certiorari, and remand the case back to the Fifth Circuit with instructions to give judicial reasonings for each of the issues presented, or alternatively uphold the trust for Brian and Bruce Dolenz as a passive, irrevocable trust and fully enforceable and valid, or

That upon review, the Orders and Judgments of the Fifth Circuit be reversed and that the case be remanded back for a trial by jury in the Dallas Federal Court; and for such and further relief to which this Petitioner may be entitled.

Respectfully submitted,

BERNARD DOLENZ, pro se
#31480-077
6102 Swiss Avenue
Dallas, Texas 75214
(214) 821-0220
bernarddolenz@att.net

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 09-50302
Summary Calendar

BERNARD DOLENZ, Trustee

Plaintiff-Appellant

v.

WTG GAS PROCESSING, L.P.;
VEALMOOR GP, INC.

Defendants-Cross-Claimants-Appellees

UNITED STATES OF AMERICA

Cross-Defendant-Appellee

J. BAXTER BRINKMANN

Intervenor Plaintiff-Appellee

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:06-CV-117

(Filed Dec. 30, 2009)

Before JOLLY, WIENER, and ELROD, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Bernard Dolenz, Trustee, proceeding pro se, appeals from the Amended Final Judgment of the district court filed June 30, 2009. Our painstaking review of the extensive record on appeal in this case, and of the facts and law as set forth in the briefs of the parties, satisfies us that the district court's judgment is, in all respects, correct and fully supported by the applicable law; and that the myriad claims and assertions of Plaintiff-Appellant Dolenz are wholly lacking in merit, to the point of frivolousness and approaching sanctionability. Therefore, for essentially the same reasons expressed by the district court, its Amended Final Judgment, and all other rulings and orders of which Plaintiff-Appellant complains, are

AFFIRMED.

---

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

BERNARD DOLENZ, **Plaintiff,**	§	
v.	§	
WTG GAS PROCESSING, L.P. and VEALMOORE GP, INC. **Defendants,**	§	**MO-06-CV-117**
v.	§	
THE UNITED STATES OF AMERICA **Cross-Defendant.**	§	
J. BAXTER BRINKMANN, **Intervenor Plaintiff.**	§	

AMENDED FINAL JUDGMENT

(Filed Jun. 30, 2009)

On March 31, 2009, the Court entered orders granting Defendants' Motion for Partial Summary Judgment (Doc. 128), Defendants' Motion for Summary Judgment on Counterclaim and Declaratory Judgment Claim (Doc. 129), and Intervenor's Motion for Summary Judgment (Doc. 132). On April 7, 2009, the United States moved to amend or correct the Court's final judgment and order denying as moot the Government's Motion for Summary Judgment (Doc. 175). The Court was additionally informed of clerical issues with distribution of funds under the first

entered judgment. On this day, the Court entered an order entitled Amended Order Granting in Part and Denying in Part Government's Motion for Summary Judgment. The effect of granting these motions was to dispose of all outstanding issues in this cause of action.

The Court now amends its final judgment, entered pursuant to Rule 58 of the Federal Rules of Civil Procedure, as follows:

1. It is ORDERED that Defendant's Motion for Partial Summary Judgment (Doc. 128), Defendant's Motion for Summary Judgment on Counterclaim and Declaratory Judgment Claim (Doc. 129), and Intervenor's Motion for Summary Judgment (Doc. 132) are GRANTED.

2. It is ORDERED that the Government's Motion for Summary Judgment (Doc. 127) is GRANTED IN PART AND DENIED IN PART AS MOOT.

3. It is ORDERED that Plaintiff's Motion to Transfer Case (Doc. 131), Defendant's Motion to Bifurcate Trial (Doc. 147), and Defendant's Motion in Limine (Doc. 148) are DENIED AS MOOT.

4. The Court finds that the total funds that have been deposited into the Court's registry to date for this interpleader cause of action are $255,109.70, plus interest. (Def. Supp. Accounting of Funds Paid, Doc. 186; clerk memorandum). The amount of this figure attributed to the owner of the SNPI at issue in this case through August 12, 2006, (up to the date of Ms. Brinkmann's death) is $117,239.52. The amount of this figure attributed to the owner

of the owner of the SNPI beginning August 13, 2006 to the present is $137,870.18.

5. The Court finds that the amount of $117,239.52, plus interest accrued, less appropriate registry fee to the Clerk of the United States District Court, if applicable, is to be disbursed to the UNITED STATES OF AMERICA because of its valid preexisting lien on funds accruing to Plaintiff BERNARD DOLENZ, individually.

6. The Court finds that the amount of $137,870.18 is to be disbursed to Intervenor J. BAXTER BRINKMANN, plus interest accrued, less appropriate registry fee to the Clerk of the United States District Court, if applicable.

Signed this 30 day of JUNE, 2009.

/s/ Robert Junell
ROBERT JUNELL
United States District Judge
Western District of Texas

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

BERNARD DOLENZ,	§	
Plaintiff,	§	
	§	
v.	§	
	§	
WTG GAS PROCESSING,	§	
L.P. and VEALMOORE	§	
GP, INC.	§	
Defendants,	§	**MO-06-CV-117**
	§	
v.	§	
	§	
THE UNITED STATES	§	
OF AMERICA	§	
Cross-Defendant.	§	
	§	
J. BAXTER BRINKMANN,	§	
Intervenor Plaintiff.	§	

FINAL JUDGMENT

(Filed Mar. 31, 2009)

On this day, the Court entered orders, granting Defendants' Motion for Partial Summary Judgment (Doc. 128), Defendants' Motion for Summary Judgment on Counterclaim and Declaratory Judgment Claim (Doc. 129), and Intervenor's Motion for Summary Judgment (Doc. 132). The effect of granting these motions is to dispose of all outstanding issues in this cause of action. The Court now enters its final judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

It is ORDERED that Defendants' Motion for Partial Summary Judgment (Doc. 128), Defendants' Motion for Summary Judgment on Counterclaim and Declaratory Judgment Claim (Doc. 129), and Intervenor's Motion for Summary Judgment (Doc. 132) are **GRANTED**.

It is ORDERED that the Government's Motion for Summary Judgment (Doc. 127), Plaintiff's Motion to Transfer Case (Doc. 131), Defendants' Motion to Bifurcate Trial (Doc. 147), and Defendants' Motion in Limine (Doc. 148) are **DENIED AS MOOT**.

Defendants filed an advisory to the court, detailing an accounting of funds paid into the court registry, on July 23, 2008 (Doc. 164).[1] The total amount of money in the Court's registry attributed to the owner of the SNPI at issue in this case, which has been deposited into the Court Registry through August 12, 2006 (up to the date of the Ms. Brinkmann's death on August 13, 2006), is $117,239.52. The Court finds that this amount of $117,239.52[2] is awarded to Plaintiff Dolenz individually. The Court also finds that the United States Government has a valid preexisting lien on any sums awarded to Dolenz.

---

[1] The Court ordered that an accounting provided to Mr. Dolenz, to the United States Government, and to Mr. Brinkmann of how those funds are allocated.

[2] This amount does not include any interest which has been earned on the amounts while on deposit in the Court registry.

The Court finds that any monies that accrued to the fund after the date of Ms. Brinkmann's death on August 13, 2006 are awarded to Intervenor Brinkmann as his remainder interest. The total amount of money in the Court's registry attributed to the owner of the SNPI at issue in this case which has been deposited into the Court Registry (after the date of Ms. Brinkmann's death on August 13, 2006) is $104,501.92. The Court finds that this amount of $104,501.92[3] is awarded to Intervenor Brinkmann. The Court also finds that any future payments on this interest of the SNPI are payable to Intervenor Brinkmann.

It is ORDERED that the parties bear their own costs.

It is FINALLY ORDERED that any other pending motion in this case not listed above is **DENIED AS MOOT**.

Signed this 31 day of MARCH, 2009.

/s/ Robert Junell
ROBERT JUNELL
United States District Judge
Western District of Texas

---

[3] This amount does not include any interest which has been earned on the amounts while on deposit in the Court registry.

THE STATE OF TEXAS
COUNTY OF Scurry

94 0380 VOL 327 PAGE 207
Know All Men
by These Presents:

THAT WHEREAS, by virtue of a certain Execution issued out of the 162nd District Court of the County of Dallas in the State of Texas, in favor of Caroline Berthelot and Bernard J. Dolenz and against Virginia Brinkmann on a certain judgment rendered on the 13th day of August A. D. 1991 and directed and delivered to me as Sheriff of Scurry County, concerning one of the goods and chattels, lands and tenements of the said Virginia Brinkmann to make certain moneys in said writ specified. I, Keith Collier, Sheriff as aforesaid, did, on the 18th day of January A. D. 1994, levy upon and take into my possession by law, at 2:06 P.M. all said property at public vendor, when the same was struck off to Caroline Berthelot, Trustee for the sum of Four hundred and thirty and No/100———— Dollars, she being the highest bidder therefor.

Now, therefore, in consideration of the purchase, and the payment of said sum of Four hundred and thirty and No/100———— Dollars, the receipt of which is hereby acknowledged, I, Keith Collier, Sheriff as aforesaid, have said, and by those present do bargain, sell and deliver unto the said Caroline Berthelot, Trustee all the right, title and interest which the said Virginia Brinkmann had on the 1st day of February A. D. 1994, or at any time afterwards, in and to the following described property, to wit:

DESCRIPTION OF THE INTEREST OF VIRGINIA BRINKMANN IN THE J.R. BUTLER "net cash gains" Interest in the Synder Gasoline Plant in Snyder (Scurry County), Texas

Originally oil, gas & mineral leases owned by Pan American Production Company in the Kelly Snyder Field in Scurry County Texas were purchased by J.R. Butler. (Contract to purchase Casinghead Gas, etc. dated: June 1950 and of record in Scurry County) [Vol. 95, 210 [Illegible] and also recorded Vol. 95, P. 211 Oil & Gas Lease Records – Scurry County TX.] Attached refer to SUPPLEMENTAL AGREEMENT of June, 1967 which sets out the specific ownership of VIRGINIA H. BRINKMANN, P.O. Box 226, Shreveport, Louisiana (see page 3 of attached agreement)

> More particularly, Virginia Brinkmann owns a 7.3% interest in the 8.0086% interest in the Snyder Gasoline Plant, located in Scurry County, Texas, and facilities related thereto and the rights of Buyer under that certain Casinghead Gas Purchase Contract, dated as of June 9, 1950, by and between Pan American Production Company, as Seller, and J.R. Butler, as Buyer, as amended by Amendment of Casinghead Gas Contract, dated August 16, 19[Illegible], together with its right, title and interest in certain other contracts and agreements, all of which interests are more particularly described in Schedule 1 attached hereto and hereby made a part hereof (said interests being

hereinafter collectively called the "Snyder Interests"), subject, however, to burdens and encumbrances therein described. (SEE COMPLETE DOCUMENT ATTACHED)

Interest

VIRGINIA H. BRINKMANN's is a 7.5 [Illegible] of the J.R. Butler 8.0084% interest in the Snyder Gasoline Plant. That % interest is the [Illegible] profits which are figured on the basis of all connecting pipelines and distribution systems under the gathering system [Illegible] by and/or entering the Snyder Gasoline Plant. This "net cash gains" interest is further referred to as TEXACO PAY ORDER FROM STATION 32 – [Illegible] to [Illegible] #13010 in the name of VIRGINIA H. BRINKMANN. Above Supplemental Agreement sets out the parameters establishing this ownership and % interest owned by VIRGINIA H. BRINKMANN on which TEXACO became the monthly pay schedule.

TO HAVE AND TO HOLD the same unto the said Caroline Berthelot, Trustee heirs and assigns, forever, as fully as I, as Sheriff as aforesaid, can sell, transfer and dispense of the same by virtue of said Bill of Sale.

IN TESTIMONY WHEREOF, I have hereunto set my hand, this 1st day of February A. D. 1994.

/s/ Keith Collier Sheriff,
Scurry County, Texas.

By /s/ _____ Deputy.

VOL 327 PAGE 223

SCHEDULE 1

SNYDER GASOLINE PLANT INTEREST

All of the right, title and interest of J. M. Butler & Company in and to the following:

(1) The gasoline plant located in Scurry County, Texas, constructed pursuant to Agreement for Construction and Operation of Snyder Gasoline Plant dated as of June 1, 1950, by and between Barnsdall Oil Company, as operator, and J. R. Butler, et al., as non-operators, the interest of J. R. Butler & Company in said Snyder Gasoline Plant being an undivided 8.80086%, together with the same undivided interest in Tract Twenty (20) of Section Thirty-nine (39) and Section Forty (40) of the Kirkland and Fields Survey, Scurry County, Texas, and in all machinery, equipment, lines, tankage, compressors, fixtures, gathering systems, casing-head gas contracts and all other property, where real, personal or mixed, tangible or intangible, or every kind and description acquired or used or held for use in connection with the said Snyder Gasoline Plant;

(2) Agreement for Construction and Operation of Snyder Gasoline Plant dates as of June 1, 1950, by and between Barnsdall Oil Company, as operator, and J. R. Butler, et al., as non-operators, as amended;

(3) Casinghead Gas Contract dated as of June 9, 1950, by and between Pan American Production Company, as Seller, and J. R. Butler, as Buyer, recorded in Volume 95, page 240, of the Oil & Gas Lease Records of Scurry County, Texas, as amended by letter agreement dated February 25, 1953, between Scurry Natural Gasoline Corporation and Pan American Production Company, and as amended by Agreement of Casinghead Gas Contract dated August 16, 1957, between Pan American Petroleum Corporation, as Seller, and J. R. Butler & Company, as Buyer;

(4) Casinghead Gas Contract, Snyder Gasoline Plant, Scurry County, Texas, dated as of August 15, 1950, by and between Scurry Natural Gasoline Corporation, as Seller, and Barnsdall Oil Company, for itself and as agent and operator for the owners of the Snyder Gasoline Plant, as Buyer, as amended by Amendment of Casinghead Gas Contract dated the ___ day of _____, 1957, between J. R. Butler & Company, as Seller, and Sunray Mid-Continent Oil Company, as Buyer;

(5) Gas Purchase Contract dated July 18, 1950, by and between J. R. Butler and Lone Star Gas Company ("Lone Star") as amended by (a) Amendment of Gas Purchase Contract dated as of January 1, 1953, by and between Scurry Natural [224] Gasoline Corporation and Lone

Star and (b) Amendment of Gas Purchase Contract dated as of July 1, 1958, by and between J. R. Butler & Company and Lone Star; and

(6) Sales Contract dated December 2, 1960, effective as of June 1, 1960, by and between J. R. Butler & Company and Warren Petroleum Company, as amended by letter agreements dated October 30, 1963; January 15, 1964; March 21, 1966 and December 16, 1966, covering the sale of natural gasoline and LPG.

The above interests are subject to the following:

(a) the terms and provisions of the aforementioned Agreement and Construction and Operation of Snyder Gasoline Plant;

(b) that 50% net profits interest reserved in the aforementioned Casinghead Gas Contract dated as of June 9, 1950, by and between Pan American Production Company and J. R. Butler, as set forth in item (3) above, together with the lien granted to Pan American Production Company in said contract, which lien is more particularly set out and described in that agreement dated February 21, 1951, between Scurry Natural Gasoline Corporation and Pan American Production Company;

(c) that undivided 25% of "net cash gain" reserved by J. R. Butler in assignment dated August 14, 1950, from J.R. Butler to Scurry Natural Gasoline Corporation recorded in Volume 95, page 211, of the Oil & Gas Lease Records of Scurry County, Texas, as amended, together

with the lien granted to J. R. Butler in said assignment;

(d) the terms and provisions of that Gas Purchase Contract set out in item (5) above; and

(e) the terms and provisions of that Sales Contract set out in item (6) above.

Filed for record this 1st day of February 1994, at 5:58 P.M.

Recorded this 2nd day of [Illegible]

THE STATE OF TEXAS,
County of Scurry | BEFORE ME Joe M. Cheyne

Notary Public in and for Scurry County, Texas, on this day personally appeared Keith Collier known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 1st day of February 1994.

/s/ Joe M. Cheyne
[Seal] JOE M. CHEYNE
Notary Public, State of Texas
My Commission Expires
June 3, 1996

THE STATE OF TEXAS,
County of Scurry

I, _____ Clerk of the County Court of said County, do hereby certify that the foregoing instrument of writing, dated the ___ day of _____A. D. 19___, with its Certificate of Authentication, was filed for record in my office the ___ day of _____A. D. 19___, at ___ o'clock ___M., in the records of Bills of Sale of said County, to Volume ___ on Pages ___.

WITNESS MY HAND and the Seal of the County Court of said County, at office in _____ the day and year last above written.

/s/ _____Clerk
County Court _____County.
By /s/ _____Deputy.

[Illegible]

Sheriff's Bill of Sale to Personal Property

FROM

_____

By _____ Sheriff,

TO

_____

Filed for Record the ___ day of _____ 19___, at ___ o'clock ___M.

_____
County Clerk.

By _____
Deputy.

Sheriff's Fees.....$ _____
Clerk's Fees for Recording.....$ _____

[Illegible]

_____

SUPPLEMENT TO CERTIFICATION OF INTEREST

(Filed Jan. 10, 2007)

1. Caroline Berthelot, individually and as Trustee, certified her ownership of an interest in and to the net cash gain interest August 18, 2005 as being of 39.13% of 7.5% interest formerly owned by Virginia H. Brinkmann pursuant to a Bill of Sale dated February 1, 1994, from Keith Miller, Sheriff, Scurry County, Texas to Caroline Berthelot, Trustee, recorded in Volume 327, Page 207 of the Oil and Gas Lease Records of Scurry County.

2. Pursuant to the Judgment dated October 4, 1994, entered in Cause No. 94-5091, styled Bernard J. Dolenz v. Carolina Berthelot, in the District Court of Dallas County, Texas, 68th Judicial District, Caroline Berthelot, Trustee ("Berthelot") granted and conveyed to Bernard Dolenz, Trustee ("Dolenz") 69.87% of the 7.5% interest formerly owned by Virginia H. Brinkmann and acquired by Caroline Berthelot pursuant to the above referenced Bill of Sale.

3. The ownership interest by Berthelot and Dolenz in the Snyder Net Cash Gain Interest as described in the Bill of Sale, effective as of October 4, 1994, was and is as follows:

Caroline Berthelot, Trustee	33.13% of 7.5%
Bernard Dolenz, Trustee	60.87% of 7.5%

4. Bertholet hereby ratifies, confirms and adopts this Supplement to her Certification of Interest of August 18, 2005.

Executed on the date set opposite her signature:

03/14/06 — Date

/s/ Caroline Bertholet
Caroline Bertholet,
individually and as Trustee

SWORN TO AND SUBSCRIBED BEFORE ME this 14th day of March, 2006.

/s/ Tony Ramos
NOTARY PUBLIC –
STATE OF TEXAS
My commission expires:
7-19-2005

[SEAL] TONY RAMOS
Notary Public, State of Texas
My Commission Expires
7-19-2005